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Attorneys for Plaintiff - Federal Insurance Company

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FEDERAL INSURANCE COMPANY,

Plaintiff,

07-CV-11095 (JFK) (THK)

- against -

REPLY TO
COUNTERCLAIMS

TURNER CONSTRUCTION COMPANY,

ECF CASE

Defendant.

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Plaintiff, Federal Insurance Company (“Federal”), by its attorneys, Schnader Harrison Segal & Lewis LLP, as and for its reply to the counterclaims of defendant, Turner Construction Company (“Turner”) contained in Turner’s Answer with Counterclaims dated February 14, 2008, alleges as follows:

1. Denies knowledge or information sufficient to form a belief with respect to the allegations set forth in paragraph 37.
2. Admits the allegations set forth in paragraph 38.

3. Admits the allegations set forth in paragraph 39.

4. Paragraph 40 alleges a conclusion of law to which a no response is required and which issue is referable to the Court, but to the extent that the paragraph alleges facts concerning citizenship, upon information and belief, believes the allegations to be true.

5. Denies knowledge or information sufficient to form a belief as to the allegations in paragraph 41, but asserts, upon information and belief, that a written agreement was entered into between Turner and non-party New York City Economic Development Corporation (“EDC”), and refers to the agreement for its date, terms, conditions, and contents.

6. Denies the allegations in paragraph 42, except admits that a Subcontract was entered into and refers to the Subcontract for its terms, conditions, and content.

7. Denies the allegations in paragraph 43, but admits a performance bond was issued and refers to the Bond for its terms, conditions, and contents.

8. Denies the allegations in paragraph 44.

9. Denies the allegations in paragraph 45.

10. Denies the allegations in paragraph 46.

11. Denies the allegations in paragraph 47.

12. Denies the allegations in paragraph 48.

13. Denies the allegations in paragraph 49.

14. Denies the allegations in paragraph 50, except admits that Federal's obligations under the Bond have been discharged and that Turner's termination of the Subcontract was improper.

15. Paragraph 51 asserts a conclusion of law to which a response is not required, but to the extent that it makes factual allegations, denies the allegations.

16. In response to paragraph 52, Federal repeats its responses to paragraphs 39 through 51 with the same force and effect as if set forth at length.

17. Denies the allegations in paragraph 53.

18. Denies the allegations in paragraph 54.

A FIRST DEFENSE

19. Turner fails to state a claim upon which relief could be granted.

A SECOND DEFENSE

20. Turner, by its actions and failures to act, has discharged Federal, in whole or in part, from any obligation under the Bond.

A THIRD DEFENSE

21. Turner has waived its claims, in whole or in part.

A FOURTH DEFENSE

22. Turner's claims are barred by the doctrines of estoppel, laches, and unclean hands.

A FIFTH DEFENSE

23. Turner breached the Subcontract by, among other things, failing to make payments due and owing to Pile.

24. Therefore, Turner is barred from any recovery under the Bond.

A SIXTH DEFENSE

25. If Turner has incurred damages, which is denied, such damages were caused in whole, or substantial part, by Turner and/or the EDC without contribution by Federal or its principal.

WHEREFORE, plaintiff Federal Insurance Company demands judgment dismissing the counterclaim of defendant Turner Construction Company, together with the costs and disbursements of this action.

Dated: New York, New York
May 7, 2008

SCHNADER HARRISON SEGAL & LEWIS, LLP

By:



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